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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,619	02/12/2004	Suresh Rangaswamy Babu	11884/407501	3957

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/776,619	BABU, SURESH RANGASWAMY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dennis Ruhl	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-9 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9, 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's election of claims 7-9,17-19 in the reply filed on 5/15/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Applicant did not address the requirement on the merits. Additionally, applicant canceled the claims to the other inventions so this effectively moots the restriction requirement because now only claims 7-9,17-19 remain.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 7-9,17-19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yaroshuk et al. (4253768).

For claims 7,17, Yaroshuk discloses the testing of metallic products to see if they have any defects. Disclosed is that metallic surfaces are analyzed by using sensors which gather product performance data. The data collected is analyzed by a computer to determine if certain benchmarks are met (see the summary section where this is discussed, also see column 4, lines 1-column 5, line 31). Defects are noted and then classified according to type. An alert is generated if a product shows any defects and the alert depends on the type of defect noted. With respect to the determination of whether or not the instance related to a previously undetected defect, this is not explicitly disclosed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine whether or not the instance of the product not passing the benchmark related to a previously undetected defect. When one is testing products to identify any defects, one of ordinary skill in the art is clearly interested in understanding what the defects are and why they happened. One of ordinary skill in the art would have been motivated to determine what the defect is and why, so that any problems that the manufacturer is not yet aware of can be addressed. When one of ordinary skill in the art is detecting defects using the system of Yaroshuk, they also would determine whether or not the instance of failure is due to a new defect or a previously known defect.

For claims 8,18, determining whether or not a previously detected defect is occurring at a rate that exceeds statistical limits is not disclosed. It would have been

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obvious to one of ordinary skill in the art at the time the invention was made to see if the defect that is noted is occurring at a rate that is higher than an acceptable defect rate. This is done all the time when evaluating possibly defective products and deciding on whether or not to initiate a recall. If it is found that only 0.01% of products have the defect, then a recall may not be necessary due to such low defect rates. However, if the defect rate is higher than some pre-established value (i.e. 10%), that would indicate that there is a high defect rate that would need to be addressed. If a high defect rate is noted (higher than a threshold limit) one of ordinary skill in the art would have found it obvious to generate an alert (a report detailing the defect and the fact it exceeds the limit, a call to a manager to inform them of the defect and the high rate at which the defect is occurring, etc.).

For claims 9,19 not disclosed is diffusion modeling as claimed. When one of ordinary skill in the art notes a defect in a product, where the product has already been distributed or sold and the defect is of a nature that requires some action, one of ordinary skill in the art would have found it obvious to figure out how many products were distributed or sold so that if they need to be recalled and cannot be sold, the original manufacturer can estimate the cost of a recall or can notify their distributors to tell them to pull the products off the shelves.

4. Applicant's arguments with respect to claims 7-9,17-19 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'D. Ruhl', with a long horizontal flourish extending to the right.

DENNIS RUHL  
PRIMARY EXAMINER